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& Trading, Co. and Five Seas Shipping  
Co., LLC*

**FILED**

DISTRICT COURT OF GUAM

OCT - 4 2006

**MARY L.M. MORAN**  
CLERK OF COURT

IN THE DISTRICT COURT OF GUAM

UNITED STATES OF AMERICA,  Plaintiff,  vs.  MARWAN SHIPPING & TRADING, CO., FIVE SEAS SHIPPING CO., LLC, AND S.J. GARGRAVE SYNDICATE 2724, in personam,  Defendants.  AND CROSS-CLAIMS, COUNTERCLAIM, AND CLAIM IN INTERVENTION.	CASE NO. 06-00011     <b>MARWAN AND FIVE SEAS ANSWER TO INCHCAPE'S COMPLAINT IN INTERVENTION; AND COUNTERCLAIM</b>
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**ANSWER TO COMPLAINT IN INTERVENTION**

Marwan Shipping & Trading Company, LLC, Sharjah and Five Seas Shipping  
Company, LLC, Sharjah answer Inchcape's Complaint in Intervention as follows:

1. Admit.

MARWAN AND FIVE SEAS ANSWER TO INCHCAPE'S  
COMPLAINT IN INTERVENTION; AND COUNTERCLAIM  
Cause No. 06-00011 - 1

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1           2.     These answering defendants admit that this court has jurisdiction of this  
2 matter.

3           3.     Admit.

4           4.     These answering defendants are without knowledge and information  
5 sufficient to answer this paragraph and therefore deny same.

6           5.     Denied.

7           6.     Admitted.

8           7.     These answering defendants are without knowledge and information  
9 sufficient to answer this paragraph and therefore deny same.

10          8.     Marwan Shipping and Trading Company, LLC, Sharjah (Marwan) is a UAE  
11 corporation. Except as so admitted, the allegations of paragraph 8 are denied.

12          9.     Five Seas Shipping Company, LLC, Sharjah (Five Seas) is a UAE  
13 corporation. Except as so admitted, the allegations of paragraph 9 are denied.

14          10.    Denied.

15          11.    Marwan was the general agent of the M/V AJMAN 2 with no commercial  
16 responsibility. Five Seas was the manager of the M/V AJMAN 2. The AJMAN 2 was  
17 foreign flagged and registered. Except as so admitted, the allegations of paragraph 11  
18 are denied.

19          12.    Admitted.

20          13.    The underlying factual basis for the U.S. government's lawsuit and  
21 Inchcape's Complaint revolves around the events that followed from the entry of the  
22 AJMAN 2 into the port of Guam and the negligent acts and omissions of agents of the  
23

1 United States and Inchcape. Except as so admitted, the allegations of paragraph 13  
2 are denied.

3 14. The U.S. government claimed that the AJMAN 2 posed a substantial  
4 threat of pollution. Except as so admitted, the allegations of paragraph 14 are denied.

5 15. Denied.

6 16. Admitted.

7 17. These answering defendants are without knowledge and information  
8 sufficient to answer this paragraph and therefore deny same.

9 18. Admitted.

10 19. These answering defendants are without knowledge and information  
11 sufficient to answer this paragraph and therefore deny same.

12 20. The COFR application speaks for itself. Except as so admitted, the  
13 allegations of paragraph 20 are denied.

14 21. The U.S. government served its summons and complaint on Five Seas  
15 through Inchcape. Except as so admitted, these answering defendants are without  
16 knowledge and information sufficient to answer this paragraph and therefore deny  
17 same.

18 22. The COFR application speaks for itself. Except as so admitted, the  
19 allegations of paragraph 22 are denied.

20 23. Denied.

21 24. These answering defendants are without knowledge and information  
22 sufficient to answer this paragraph and therefore deny same.

1           25.   These answering defendants are without knowledge and information  
2 sufficient to answer this paragraph and therefore deny same.

3           26.   These answering defendants are without knowledge and information  
4 sufficient to answer this paragraph and therefore deny same.

5           27.   These answering defendants are without knowledge and information  
6 sufficient to answer this paragraph and therefore deny same.

7           28.   These answering defendants are without knowledge and information  
8 sufficient to answer this paragraph and therefore deny same.

9           29.   Denied.

10          30.   Denied

11          31.   Navigators was the P&I insurer of the AJMAN 2. Except as so admitted,  
12 the allegations of paragraph 31 are denied.

13          32.   Navigators was the P&I insurer of the AJMAN 2. Except as so admitted,  
14 these answering defendants are without knowledge and information sufficient to answer  
15 this paragraph and therefore deny same.

16          33.   Admitted.

17          34.   These answering defendants do not know what damage the Port of Guam  
18 incurred. Subject to this qualification, admitted.

19          35.   These answering defendants are without knowledge and information  
20 sufficient to answer this paragraph and therefore deny same.

21          36.   No answer is required to paragraph 36.

22          37.   These answering defendants are without knowledge and information  
23 sufficient to answer this paragraph and therefore deny same.

1 38. Denied.

2 39. Denied.

3 40. Denied.

4 41. Denied.

5 42. No answer is required to paragraph 42.

6 43. Denied.

7 44. Denied.

8 45. No answer is required to paragraph 45.

9 46. Denied.

10 47. Denied.

11 48. Denied.

12 49. No answer is required to paragraph 49.

13 50. These answering defendants do not know what damages the Port claims,  
14 and therefore are without knowledge and information sufficient to answer this paragraph  
15 and therefore deny same.

16 51. These answering defendants are without knowledge and information  
17 sufficient to answer this paragraph and therefore deny same.

18 52. Denied.

19 **AFFIRMATIVE DEFENSES TO INTERVENOR'S COMPLAINT**

20 1. Failure to state facts sufficient to constitute a cause of action against these  
21 answering defendants.  
22  
23

1           2.     These answering defendants are informed and believe that if the  
2 Intervenor plaintiff sustained any injuries and damages, they proximately resulted  
3 from the conduct of the Intervenor plaintiff and/or others.

4           3.     The claims set forth in the complaint in intervention are time barred.

5           4.     Intervenor plaintiff, by its conduct and/or the conduct of its agents,  
6 servants, representatives, or employees, has waived and/or is estopped and barred  
7 from any rights of recovery against these answering defendants.

8           5.     Intervenor plaintiff is barred from any relief against these answering  
9 defendants by reason of unclean hands.

10          6.     Intervenor plaintiff and/or other parties not related to this defendant were  
11 careless and negligent in and about the matters referred to in the complaint in  
12 intervention, or were otherwise responsible and legally liable for the allegations  
13 contained in said pleading, which negligence, carelessness, and/or legal liability  
14 proximately contributed to and/or were the sole proximate cause of the damages or  
15 injuries complained of, if any there be. Such negligence, carelessness, and/or  
16 liability bar and/or proportionately reduce any recovery against these answering  
17 defendants.

18          7.     Intervenor plaintiff has failed to mitigate and minimize its damages, if any  
19 there be, and said failure eliminates or reduces any claim for relief by Intervenor  
20 plaintiff against these answering defendants.

21          8.     In the event it is held liable, these answering defendants allege that their  
22 liability is secondary to other parties in this action and on that basis allege that any  
23

award to which the Intervenor plaintiff is entitled must first be satisfied by said other parties.

9. Intervenor plaintiff lacks standing to assert its claims in this action.

10. Intervenor plaintiff's claims, if any, are not ripe for adjudication at this time and/or in this forum.

11. Pursuant to 46 U.S.C. § 181 *et seq.* these answering defendants liability, if any, is limited to the value of each defendant's interest, if any, in the AJMAN 2.

12. These answering defendants hereby incorporate all defenses raised or that could be raised by other parties to this action as if asserted here in full.

13. These answering defendants reserve the right to supplement and add to these affirmative defenses as appropriate.

#### **COUNTER CLAIM TO INTERVENOR'S COMPLAINT IN INTERVENTION**

1. Jurisdiction: This Court has Jurisdiction pursuant to 28 USC § 1333 as this is a case of admiralty and maritime jurisdiction and within Rule 9(h) of the Federal Rules of Civil Procedure.

2. Parties: (a) Defendant counter-claimant Marwan has a place of business in the United Arab Emirates, and was the general agent, with no commercial responsibility for the M/V AJMAN 2.

(b) Defendant, counter-claimant Five Seas has a place of business in the United Arab Emirates, and was the manager of the M/V AJMAN 2.

(c) Plaintiff intervenor was the port agent for the M/V AJMAN 2 and has its principal place of business in Guam.

1 **FIRST CAUSE OF ACTION**  
2 **(Negligence Against Inchcape)**

3 3. Inchcape through its agents and others, was negligent in the manner in  
4 which it attended to the needs of the M/V AJMAN 2 after the U.S. Coast Guard allowed  
5 the M/V AJMAN 2 to enter the Port of Apra, Guam.

6 4. Inchcape, through its agents and others, was negligent in the supply of  
7 lines and fenders to the M/V AJMAN 2 and to the general mooring arrangements of the  
8 M/V AJMAN 2.

9 5. Such negligence was a direct and superseding cause of the damages  
10 which the United States has alleged in its Verified Complaint and which others,  
11 including Inchcape, have alleged in claims, cross-claims and counter-claims.

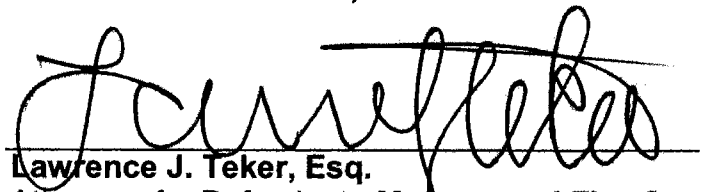
12 6. As a direct and proximate result of such negligence by Inchcape, these  
13 answering and counterclaiming defendants have suffered damages in an amount to be  
14 proven at trial. These answering and counterclaiming defendants are entitled to recover  
15 from Inchcape for its negligent acts and/or omissions, and those of its agents.

16 DATED this 3 day of October, 2006.

17 **STAFFORD FREY COOPER**

18 **TEKER TORRES & TEKER, P.C.**

19 By:

20   
21 **Lawrence J. Teker, Esq.**  
22 **Attorneys for Defendants *Marwan and Five Seas***